APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,168	06/27/2007	Klaus Leuschner	2003P08256WOUS	4156

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EXAMINER
MORAN, RANDAL D

ART UNIT	PAPER NUMBER
2435	

MAIL DATE	DELIVERY MODE
05/27/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/574,168	LEUSCHNER ET AL.
	Examiner	Art Unit
	RANDAL D. MORAN	2435

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>04 May 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

    b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ They raise the issue of new matter (see NOTE below);

    (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>10,11 and 13-25</u>.

    Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure* Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Kimyen Vu/ Supervisory Patent Examiner, Art Unit 2435	/Randal D. Moran/ Examiner, Art Unit 2435

 Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 5/4/2009 have been fully considered but they are not persuasive.

Regarding Claim 10, applicant's arguments have been fully considered but are not persuasive. With respect to applicant's argument that Pou fails to teach the license database including both one or more non-licensed software modules and licensed software modules and license information, the license information resident in the switching device pertaining to each of the software modules, applicant is directed to Pou- [0010], [0014]. Pou discloses:

"[0010] Implementations include one or more of the following features. The data file can be a media file. The search for information relating to an authorization to access the data file can be conducted in a license database on the user device. The license database can be located in the non-volatile storage area of the user device. The non-volatile storage area of the user device can be a basic input/output system (BIOS). The data stored in the non-volatile storage area of the user device can include a location of the license database and/or an access key for the license database. The data stored in the non-volatile storage area of the user device can include a location of the license database and/or an access key for the data file, with the access key being necessary to disable the wrapper. The search for information relating to an authorization to access the data file can be conducted in a license database associated with a remote server in response to a determination that a local database on the user device does not include information relating to an authorization to access the data file."

Pou teaches that if authorization information is not found to be present within the local database, then to search a remote server. This teaches that the authorization information may be present within the local database and therefore, reads on Claim 10 of the instant application.

With respect to applicant's argument that Pou fails to teach initiating an interaction between the license database and the portable data medium with a cryptographic algorithm to determine whether the storage device and the portable data medium each include matching hardware identification information, applicant is directed to Pou- Fig. 2, [0057]-[0059]. Pou discloses:

"[0059] The user device 205 may communicate with a central server 240 through a network 245, which may include one or more of a wireless network, a LAN, a WAN, the Internet, a telephone network, and any other network for transferring data. Communications between the user device 205 and the central server 240 may be performed using a secure channel, such as the Secure Sockets Layer (SSL), and/or may use encryption, such as PGP. The central server 240 may provide services that support the digital rights management system 200, such as generating keys using, at least in part, information communicated from the user device 205 over the secure connection and validating keys and license information periodically or when attempting to license new media. In addition, the central server 240 may provide access to a central license database 250 that stores and identifies licenses held by individual users and that stores key validation information. Storage of license information in the central license database 250 provides redundancy (e.g., in case there is a corruption of a volatile memory area of a user's device), allows a re-creation of a licensed data environment on another device, allows for transfers of licenses between a user's devices, allows for remote access of license information by the user using a device without a volatile memory area (e.g., some types of cell phones), and allows streaming of licensed digital files."

Pou teaches an input output port through which the transfer of files such as music, video, or software are monitored (i.e. a portable data medium). Pou further discloses communications over the network may be performed using a secure channel (i.e. cryptographic algorithm).